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Jus Post Bellum Symposium: Jus Post Bellum, Lex Pacifactoria, and Transitional Justice

by Christine Bell

[Christine Bell is Assistant Principal (Global Justice), Professor of Constitutional Law, University of Edinburgh.]

A big congratulations on the editors for the **new volume on Jus Post Bellum**. It is a great resource for those interested in all aspects of the debate and forms a comprehensive mapping of a broad range of perspectives.

One of the interesting aspects of the book is the constant interrogation of where Jus Post Bellum sits with regard to other similar and potentially competing concepts: transitional justice, lex pacifactoria, and R2P. Several authors – myself included – either advocate these alternative perspectives, or discuss how jus post bellum might be reconciled or ‘cross-fertilized’ with these perspectives.

While I touched on this in my chapter, I have on reading the book wondered more and more why there has been such a need to ‘invent’ new concepts – or in the case of jus post bellum ‘rediscover’ and ‘reinvent’ old ones, to address our current context. What is going on, when a range of people invent largely similar concepts that work in similar ways to try to capture what they feel they see going on in the interface of law and practice?

As with any book, reading it comes together with other things you are reading and working on when you receive it. For my own part, the timing of the book, has come together with discussions we have been having in the Global Justice Academy, on Global Law, and Global Constitutional Law. Most recently, last Friday we debated the draft text of Neil Walker’s book on ‘Intimations of Global Law’ (forthcoming), where he examines the different ways in which a concept of ‘global law’ might already be with us, if as yet fully unformed or ‘intimated’ rather than arrived and settled.

In it he groups perspectives such as jus post bellum, lex pacifactoria, humanity law, and also a ‘new law of international recognition’, (and I suspect could also include transitional justice and perhaps R2P) as ‘hybrid laws’ – one of seven ‘species’ of global law.

I will not rehearse here how he conceptualises these new ‘hybrids’ – for that you must buy and read his book (!). Rather I suggest some of the dynamics that have pushed towards these particular overlapping conceptualisations of the role of international law in post-conflict environments.

First, these hybrids revolve around international law’s reach into the realm of domestic politics, and an attempt to regulate what in a sense could be understood as ‘constitutional moments’. Second, they all constitute attempts to grapple with the lack of a clear war / peace distinction, which in turn frustrates attempts to work within the traditional boundaries of international human rights law, and international humanitarian law. Third, they all have been shaped by the fast-paced evolution of international organizations from a position of seeing conflict within states as ‘not their business’, to placing such conflict at the centre of their business.

As Walker points out, all the conceptualizations also have in common that they see law not merely as passive regulator, but as in some sense generated by context, and responsive to it. In this, all three – like other manifestations of ‘global law’ appear at once, able to pull on substantive evidence of their existence, and in another sense remain simultaneously incomplete, immanent, or as Walker puts it ‘intimated’ rather than with us.

Although this new Jus Post Bellum collection does not use this language, in stepping back from projects of regime creation, into concepts of ‘Jus post bellum’ as Dworkinesque ‘integrity’, or as ‘partial law’, or ‘project’, the intimated quality of ius post bellum has become much clearer, paradoxically, as the content of the concept has become more scattered and less tangible. The strength of the concept as so refined, is in a sense the strength of the book: it points to a potential for jus post bellum to operate less as regime and more as discursive concept, through which we can interrogate a set of inter-linked moral, legal and political dilemmas that attend processes of peace-making.



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